

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of Petition for
Rulemaking of Fibertech
Networks, LLC

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RM-11303

**REPLY COMMENTS OF THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Dated: March 1, 2006

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The Massachusetts Department of Telecommunications and Energy (“MDTE”) files these reply comments in response to the Petition for Rulemaking of Fibertech Networks, LLC (“Fibertech”) filed with the Federal Communications Commission (“FCC”) on December 7, 2005.¹ The federal Pole Attachment Act (“PAA”)² delegates to the FCC the authority to regulate rates, terms, and conditions of pole attachments, forbids discrimination by utilities in granting access to pole attachments,³ and reserves to each state exclusive authority⁴ to regulate such attachments if the state certifies to

¹ Petition for Rulemaking of Fibertech Networks, RM-11303 (filed Dec. 7, 2005) (“Fibertech Petition”).

² 47 U.S.C. § 224.

³ Id. at § 224(b), (f).

⁴ States’ exclusive authority is preserved by § 224(c)(1) which states that “[n]othing in this section shall be construed to apply to, or to give the [FCC] jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and right-of-way . . . for pole attachments in any case where such matters are regulated by a State”; see also 47 C.F.R. § 1.1414.

the FCC that it satisfies certain conditions.⁵ The MDTE has filed such a certification with the FCC.⁶

⁵ 47 U.S.C. § 224(c). This section states in part:

Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—
(A) it regulates such rates, terms, and conditions; and
(B) in so regulating such rates, terms, and conditions, the State has

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the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services. . . .

⁶ See States That Have Certified That They Regulate Pole Attachments, DA 92-201, FCC Public Notice (released February 21, 1992) (listing 19 states including Massachusetts).

Pursuant to this authority, pole attachments in Massachusetts are regulated pursuant to the Massachusetts Pole Attachment Act (“MPAA”) originally enacted by the Massachusetts Legislature in 1978.⁷ The MPAA delegates regulatory authority over pole attachments to the MDTE. The MDTE has enacted regulations governing access to poles, ducts, conduits, and rights-of-way owned or controlled by utilities in Massachusetts.⁸ Under the federal PAA, once a State has implemented pole attachment regulations and has certified to the FCC that it has done so, a State is only deemed to not have authority over pole attachments within its jurisdiction, with respect to any individual pole attachment complaint, if the State does not “take final action” on the complaint within certain prescribed time periods.⁹

Given these requirements, the MDTE suggests that Fibertech’s request in its petition for federal rules offering “wide and uniform availability of . . . protections”

⁷ M.G.L. c. 166, § 25A.

⁸ 220 C.M.R. §§ 45.00 et seq.; see Order Establishing Complaint and Enforcement Procedures to Ensure that Telecommunications Carriers and Cable System Operators Have Non-Discriminatory Access to Utility Poles, Ducts, Conduits, and Rights-of-Way and to Enhance Consumer Access to Telecommunications Services, D.T.E. 98-36-A, Order Promulgating Final Regulations (July 24, 2000). See also 47 U.S.C. § 224(c)(3) (“[A] State shall not be considered to regulate the rates, terms, and conditions for pole attachments . . . unless that State has issued and made effective rules and regulations implementing the State’s regulatory authority over pole attachments . . .”).

⁹ 47 U.S.C. § 224(c)(3)(B)(i), (ii).

(Fibertech Petition at 5), cannot be provided under the statutory scheme in place. The MDTE agrees with Western Massachusetts Electric Company (“WMECo”) in that “any changes to FCC regulations that result from this proceeding will not affect utilities operating in states with their own pole attachment regulations” (WMECo Comments at 1). Therefore, while Fibertech seeks further rules from the FCC, it is beyond the FCC’s jurisdiction to require those rules be implemented in states such as Massachusetts and in the other states that have enacted pole attachment regulations and have so certified to the FCC.¹⁰

In addition, although in its petition Fibertech references difficulties it has encountered while attempting to obtain access to certain facilities in Massachusetts (see Fibertech Petition at 26-27, 30 (discussing charges assessed for record searches and manhole surveys)), we note that Fibertech did not seek relief from the MDTE on this issue, nor did Fibertech discuss the

¹⁰ These states do have the option of adopting any new FCC rules if they so choose.

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applicability of the MPAA and 220 C.M.R. §§ 45.00 et seq., rather than FCC rules, to
disputes in Massachusetts.

Respectfully submitted,

Commonwealth of Massachusetts
Department of Telecommunications and

Energy

By:

/s/

Judith F. Judson, Chairman

/s/

James Connelly, Commissioner

/s/

W. Robert Keating, Commissioner

/s/

Paul G. Afonso, Commissioner

/s/

Brian Paul Golden, Commissioner

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March 1, 2006